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**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB**

Paper No. 13
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Winner International Royalty LLC

Serial No. 75/354,735

Robert V. Vicars for Winner International Royalty LLC

Won T. Ho, Trademark Examining Attorney, Law Office 104

Before Hanak, Quinn and Holtzman, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Winner International Royalty Corporation LLC
(applicant) seeks to register in typed drawing form HARDWARE SECURITY SERIES for "metal mechanical locks." The intent-to-use application was filed on September 10, 1997.

The examining attorney has refused registration pursuant to Section 2(e)(1) of the Trademark Act on the basis that applicant's mark is merely descriptive of metal mechanical locks.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the examining attorney filed briefs. Applicant did not request a hearing.

A word or term is merely descriptive if it "immediately conveys ... knowledge of the ingredients, qualities, or characteristics of the goods ... with which it is used." In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). See also In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) ("A term is descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods."). The mere descriptiveness of a word or term is not decided in the abstract, but rather is decided in relationship to the goods or services for which registration is sought. Abcor Development, 200 USPQ at 218.

At the outset, we note that the word SERIES in applicant's mark has little if any source identifying significance. Applicant argues at page 5 of its brief that "the term SERIES is also not merely descriptive of metal mechanical locks." However, the issue before us is whether the mark HARDWARE SECURITY SERIES in its entirety is merely descriptive of metal mechanical locks. If applicant's mark were METAL MECHANICAL LOCK SERIES, then this term in its entirety would be descriptive of and indeed generic for a series of metal locks. In short, if it is determined that

Ser. No. 75/354,735

the term HARDWARE SECURITY is merely descriptive of metal mechanical locks, then this determination is not altered by the addition of the word SERIES.

Before considering the evidence of record, two legal principles should be clarified. At page 3 of its brief, applicant states that "the consumer of metal mechanical locks would not immediately, nor even quickly take the words of the subject mark, namely HARDWARE SECURITY SERIES and relate that to metal mechanical locks. Therefore, subject mark is not merely descriptive for metal mechanical locks, and therefore, is registerable on the Principal Register." We fully agree with applicant that consumers seeing the term HARDWARE SECURITY SERIES in a vacuum would not relate this term to metal mechanical locks. If they did, then the term HARDWARE SECURITY SERIES would not be simply merely descriptive of metal mechanical locks, but rather would be a generic term for metal mechanical locks. By way of analogy, consumers seeing the word "red" would not relate that word to one particular type of goods. However, this does not mean that the word "red" is not descriptive of numerous goods, including, simply by way of example, roses, lipstick and paint. As previously noted, the mere descriptiveness of

a word or term is not decided in the abstract, but rather is decided in relationship to the goods or services for which registration is sought. Abcor Development, 200 USPQ at 218. Thus, the question to be decided is whether upon seeing the term HARDWARE SECURITY SERIES in connection with metal mechanical locks consumers would gain an understanding of the qualities or characteristics of the locks.

Second, applicant argues at page 4 of its brief that "based on the definitions of record, the term HARDWARE relates to so many goods that it is incapable of being merely descriptive of any one product let alone the goods of this application." Applicant's reasoning is simply incorrect. As just noted, the word "red" is merely descriptive of numerous goods, many of which have little in common. In addition to being merely descriptive of roses, lipstick and paint, the word "red" is also merely descriptive of automobiles, barns and a wide array of other varied goods.

In this regard, reference is made to the case of In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), aff'd 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) and cases cited therein. In the Analog Devices case, it was held that the

Ser. No. 75/354,735

term ANALOG DEVICES was not only merely descriptive of, but indeed was generic for, a wide array of very different types of goods.

We turn now to the evidence of record. The examining attorney has made of record stories and advertisements demonstrating that third parties have used the term "hardware security" to describe locks and other devices which physically secure computer hardware. One advertisement is for the KABLIT™ Complete Hardware Security System. This advertisement states that the system secures valuable computers to desks, tables or other immovable objects. The system includes a lock, a six foot cable and two glue-on discs.

Other concerns likewise advertise that they offer hardware security systems to physically secure computer hardware to "immovable" objects. One advertisement states that "if the hardware can be stolen or surreptitiously replaced, secure software will not help." We will not dwell on a lengthy discussion of these various advertisements and articles because applicant at page 6 of its brief has conceded that there are indeed "devices designed to protect the physical structure of a computer." However, applicant

contends that the vast majority of these advertisements and articles "do not relate to the goods of this application." (Applicant's brief page 6). Even if we assume for the sake of argument that the term "hardware security" is more commonly used to describe devices which seek to prevent the electronic invasion of computer hardware, it must be remembered, as stated on many previous occasions, that the mere descriptiveness of a term is not judged in the abstract, but rather is judged in relation to the goods or services for which registration is sought. Abcor Development, 200 USPQ at 218. In this case, the identification "metal mechanical locks" is broad enough to encompass all locks of this type, including those used to secure computer hardware. Thus, when a consumer sees the purported mark HARDWARE SECURITY SERIES in conjunction with metal mechanical locks, the consumer will understand that these locks are designed to physically secure computer hardware to "immovable" objects. In this regard, reference is made to an article appearing in the June 21, 1995 edition of Computing Canada where the term "hardware security lock" is used in conjunction with a lock designed specifically for use with computer hardware. Reference is also made to the

following sentence taken from an article appearing in the November 1992 edition of Compute!: "In addition to password protection, the DecisionMate also comes with a hardware security kit, which consists of a restraining bracket, cable, and combination lock." (We recognize that in the past this Board has accorded either no weight or extremely limited weight to articles appearing in foreign publications. However, given the global nature of the computer industry and the fact that these articles appeared in English in Canadian publications, we believe that they are entitled to some weight. In any event, as previously noted, applicant has already conceded that there exist "devices designed to protect the physical structure of a computer.").

In conclusion, given the fact that third parties have used the term "hardware security" to describe locks and other devices to physically secure computer hardware, we find that upon seeing the purported mark HARDWARE SECURITY SERIES in connection with metal mechanical locks, consumers would immediately understand that these are a series of locks designed to secure computer hardware. Accordingly, the purported mark is merely descriptive of the goods for

Ser. No. 75/354,735

which registration is sought.

Decision: The refusal to register is affirmed.

